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From: [REDACTED]

Sent: Wednesday, May 14, 2014 10:15:55 AM

To: [REDACTED]

Cc: [REDACTED]

Bcc:

Subject: RE: Review rights after rescinding OIC or IA on grounds of fraud

—This is in response to your email request for advice regarding a taxpayer's available administrative and/or judicial review rights in connection with certain offer-in-compromise (OIC) or installment agreement (I/A) situations. We have coordinated this matter with .

With respect to your question as to whether the taxpayer (TP) would have any direct administrative appeal rights if the Service rescinds the TP's previously accepted OIC due to fraud, we agree that the TP is not entitled to any such rights. In this regard we note that while IRC section 7122(e) requires the Service to provide the TP with administrative review rights in connection with any **rejection** of a proposed OIC (including the right for review by Appeals), there are no such rights provided under section 7122 (or any other provision/authority/policy) when the previously accepted OIC has been rescinded, terminated, or modified. While the TP has no direct administrative appeal rights when an OIC is rescinded, terminated, or modified by the Service, we agree, as referenced in your email, that the TP could potentially raise the issue with Appeals in connection with a CDP hearing.

As for I/As, we point out that in addition to the right to administratively appeal a proposed rejection (see IRC 7122(e)), the TP may also administratively appeal the **modification or termination** of a previously accepted I/A to Appeals pursuant to IRC section 6159(e) and the applicable regulations. Thus, unlike OICs, the TP has a direct administrative appeal opportunity with respect to modified or terminated I/As. The TP could also raise these issues with Appeals during a CDP hearing.

Outside of the CDP context, a TP may have other opportunities for judicial review under these circumstances. For example, the TP could potentially challenge the termination of an OIC by paying the tax liability in full and ultimately filing a refund suit (based on a claim that the previously accepted OIC conclusively settled the tax liability for less than the full amount of the liability and that the Service erroneously terminated the OIC). Alternatively, the TP arguably may be able to pursue a damages claim against the Service for breach of contract (for erroneous/improper termination of the OIC) in the Court of Federal Claims.

Finally, your email recognizes that IRC “section 7433 provides an independent basis for a suit to collect damages for unauthorized collection actions” and asks whether a TP could bring a section 7433 suit to argue that the Service “remains bound by its agreement to compromise the liabilities” under these circumstances (such as the improper rescission of an OIC). In addressing this issue we first note that section 7433 is a limited waiver of sovereign immunity for damages to the extent an officer or employee of the Service “recklessly or intentionally, or by reason of negligence, disregards” the IRC or related regulations in connection with the collection of federal tax liabilities. IRC 7433(a). See e.g., *Gray v. United States*, 723 F.3d 795, 798 (7th Cir. 2013); *Miller v. United States*, 66 F.3d 220, 222-23 (9th Cir. 1995). Although a court could award “damages” (as defined in section 7433(b)) caused by, for example, the Service’s reckless rescission (or termination) of an OIC, it is our view that section 7433 does **not** provide a federal district court with a broad grant of equitable power to reinstate a terminated or rescinded OIC.

If you have any additional questions or would like to discuss this matter further, please feel free to give me a call.